

PLAINTIFFS/COUNTERCLAIM DEFENDANTS'
APPENDIX OF EVIDENTIARY MATERIALS
SUPPORTING SUMMARY JUDGMENT

NO. 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

PRESS GANEY ASSOCIATES,)
INC., and PG HOLDCO, LLC,)

Plaintiff/)
Counterdefendants,)

v.)

REGINALD W. DYE,)

Defendant/)
Counterplaintiff,)

v.)

VESTAR CAPITAL PARTNERS)
V, L.P. (d/b/a VESTAR)
CAPITAL PARTNERS, INC.),)

Counterdefendant.)

Case No:
3:12-CV-437-JTM-CAN

The Deposition of ANDREW LAMBERT
Wednesday, August 7, 2013
3:22 p.m.
Suite 2130, Four Seasons Building
75 14th Street,
Atlanta, Georgia

Called as a witness by the Plaintiff/Counterdefendant in
accordance with the Federal Rules of Civil Procedure
pursuant to notice.

REPORTED BY:
TERESA BISHOP, RPR, RMR
Notary public, Cobb County, Georgia

1 A. I hate to say it in the past, but their
2 business was one of a mobile technology that was
3 designed to give the person, the patient, mobility of
4 their medical record so they can go from hospital A to
5 hospital B and the physician's office, C, if you will,
6 and have a continuous aspect of their medical record
7 that is not just tied to a given hospital. That's the
8 intent.

9 Q. Okay. How long did you work at Cognivent?

10 A. About -- I want to say about eight months,
11 seven to eight months.

12 Q. What was your first date of employment?

13 A. October, I think.

14 Q. October of 2012?

15 A. Correct. September or October, one of the
16 two. I can't recall right now.

17 Q. Before you worked for Cognivent, did you have
18 any -- who was your previous employer?

19 A. Press Ganey.

20 Q. And your last day of employment with Press
21 Ganey was May 3rd of 2012?

22 A. May 3rd or 4th. I think it was the 4th
23 actually.

24 Q. Of 2012?

25 A. Yes, ma'am.

1 Q. So between May of 2012 and September or
2 October, what did you do?

3 A. I filled a few bucket lists, to be honest with
4 you. Took some time off to kind of figure out what I
5 wanted to do. Rode the heck out of my motorcycle. And
6 did a lot of honey-dos.

7 Q. You worked at Press Ganey as vice president of
8 sales for the national accounts and new sales, right?

9 A. And medical --

10 Q. And medical sales?

11 A. Medical services.

12 Q. So what was your official title on your
13 business card?

14 A. Vice president of new sales and national
15 accounts and medical services.

16 Q. So it was a long line, there wasn't anything
17 that encompassed all of that?

18 A. I don't recall, to be honest. I don't know.

19 Q. Was that the position that you were hired for
20 at Press Ganey?

21 A. That is correct.

22 Q. Who hired you?

23 A. Al Vega and a host of other people, I guess.
24 But he was the hiring manager.

25 Q. You started work at Press Ganey in 2009?

1 would say continued when he went to work at Press Ganey?

2 A. That's -- we're talking about his personality,
3 yes.

4 Q. Did you like working for him?

5 A. Absolutely. Yeah, I like to be in a situation
6 where my efforts good or bad, in terms of efforts like
7 any athlete might be, is you're rewarded for being a
8 good athlete and a good business person or not. And so
9 it's pretty black and white.

10 Q. Did you consider yourself to be a peer of Mr.
11 Vega?

12 A. No. No.

13 Q. He was somebody -- did you look to him as a
14 mentor at all?

15 A. Frankly at my ripe age I didn't need much
16 mentoring. But he was my boss, so no, he's not my peer,
17 he was my boss.

18 Q. And explain to me kind of the nature of the
19 interaction when you were at Press Ganey? How often,
20 for example, did you communicate with Mr. Vega?

21 A. We would have monthly meetings, he would have
22 it with all his team members at least once a month
23 actually. Depends on where it was in the quarter.

24 As the quarter was nearing its end, we would
25 have more frequent calls. And it was with me, Jason

1 Hahn and Jeri Judkins. The three of us were the
2 principal sales leaders. And then I would bring in, as
3 need be I would bring in John McNeese or Todd Gunter,
4 who were the two VPs that reported to me for their
5 business units.

6 Q. John McNeese was at the time you left Press
7 Ganey, he was vice president of new sales, is that
8 right?

9 A. That's correct. Correct.

10 Q. Who hired Mr. McNeese?

11 A. I did.

12 Q. And when you made the decision to hire Mr.
13 McNeese, why did you hire him?

14 A. Because there was an open role there because
15 Reggie had moved into a VP of operations sales role.

16 Q. And what about Mr. McNeese made him qualified
17 for the position?

18 A. Mr. McNeese has been around the block about as
19 long as I've been around the block, and he and I worked
20 together at Cerner and I have to this day a very strong
21 appreciation and respect for the man.

22 Q. Have you crossed paths since you left Press
23 Ganey with Mr. McNeese?

24 A. Saturday.

25 Q. This past Saturday?

1 A. Yes, ma'am.

2 Q. What was the nature of that communication?

3 A. Well, I was over at his cabin on Table Rock
4 Lake drinking wine, telling lies. What more do you want
5 to know?

6 Q. Well, and you answered part of it. I'm
7 assuming you're friends then?

8 A. I think you can make that assumption, yes,
9 ma'am.

10 Q. And have you been friends with him since you
11 worked with him at Cerner?

12 A. Yes.

13 Q. So there's a personal as well as a
14 professional relationship since then?

15 A. Yes, yes, we've been good friends for a long
16 time. We went separate ways for a number of years, you
17 know, different areas of health care. But we've always
18 kept in touch.

19 Q. And when you hired Mr. McNeese at Press Ganey,
20 did you make the key decisions about the terms of his
21 employment?

22 A. You'll need to explain what you're asking. I
23 didn't understand the question.

24 Q. Who decided which position he was going to be
25 in, was that you?

1 A. That was me, absolutely.

2 Q. And who decided how much he would be paid?

3 A. That was a combination of myself and HR,
4 because they had ranges like any HR department would
5 have for given roles.

6 Q. Okay. And those ranges depended on what, do
7 you know?

8 A. I don't know. I don't know.

9 Q. At some point, Mr. McNeese when he was working
10 for you as VP of new sales at Press Ganey was criticized
11 by Al Vega, do you recall that?

12 A. Because of the numbers.

13 Q. Exactly. You said that Mr. Vega was kind of a
14 black and white person?

15 A. Correct.

16 Q. When you said black and white, do you mean to
17 say he was paying attention to the numbers?

18 A. Mr. Vega or --

19 Q. Yes.

20 A. Oh, absolutely.

21 Q. And John McNeese wasn't hitting the numbers,
22 is that right?

23 A. I would say he was trying to restructure his
24 team which needed restructuring. There was a bunch of
25 open positions that needed to be filled. So his was a

1 Q. That would be the only one?

2 A. That's the only one I can think of, yeah.
3 Besides the fact he was an air force guy, but we don't
4 hold that against him.

5 Q. Being a navy man or the son --

6 A. The son of a navy man.

7 Q. So then what was your understanding of why
8 Reggie moved from VP of new sales into sales operations?

9 A. Well, there was an absolute, absolute need for
10 an operations person for sales. We had the worst CRM,
11 contact relation management. It was probably from the
12 dark ages time. I think internally developed mainly for
13 finance and certainly not for sales.

14 So a lot of internal selling to the company,
15 to the CFO and CEO at the time, Rob Draughon, that we
16 needed to have something that was going to be a
17 sales-focused type of a CRM application called
18 salesforce.com.

19 In order to maximize the salesforce.com, you
20 have to have somebody administering it, managing it,
21 basically baby-sitting it and growing it. Which that
22 was right up his alley, because that's, as I said, one
23 of his skill sets is an analytics type of person.

24 The other thing, too, which was desperately
25 needed was a person who would sit at the center of

1 on the phone so I didn't see him. I'm not sure whether
2 the first time I actually met him was at the trip in
3 Grand Cayman or not. If it wasn't the first time, it
4 would have been the second time. I just don't remember
5 the first time.

6 Q. When was the first time you remember having a
7 conversation with Mr. Ryan?

8 A. The only time I had a conversation with him
9 was at the trip, which was just an introducing my wife
10 to him type of -- that type of thing.

11 But we went to, who was it, some health system
12 in Michigan in the Detroit area, and we met with their
13 CEO and a couple of his minions, and that was the first
14 time I ever had been with him for any period of time.
15 And the following morning I'm landing in Springfield,
16 Missouri, and get a phone call and I'm fired.

17 Q. Was that at McLaren?

18 A. Thank you, that's correct.

19 Q. And that meeting was in early May of 2012?

20 A. Well, let's see. The date of my phone call
21 was May 4th, so that meeting was May 3rd.

22 Q. I don't want to quibble with your memory, but
23 according to the records that we've seen, May 3rd seems
24 to be the date of the phone call. Is that --

25 A. You may be right. You may be right. I

1 thought that my last day was May 4th, so I'm going on
2 the basis of what that is. That's what the records show
3 for me.

4 Q. I don't want to quibble, but if you want --

5 MR. TYLER KASPERS: We'll agree it's May
6 3rd.

7 THE WITNESS: That's fine, I don't have
8 a problem with that.

9 BY MS. GOZDECKI:

10 Q. In dealing with Mr. Ryan, had you ever heard
11 about the term the 19-second rule?

12 A. I heard about it after the fact, but never
13 during the course of my time there.

14 Q. I'm sorry, go ahead.

15 A. Go ahead and ask your question.

16 Q. What did you hear after the fact?

17 A. I heard that something occurred with Jason
18 Hahn, one of his clients, and I don't know the specifics
19 of it, but he was called into his office and the term
20 19-second rule came as a result of that meeting, meaning
21 that if there's anything going on with the client, he
22 wants to know about within 19 seconds.

23 But I heard about that after the fact. I had
24 not heard that before.

25 Q. What about the term prime minister?

1 Q. Mr. Lambert, tell me about Banner Health. Was
2 Banner Health -- and let's begin with the pitch that you
3 made to Banner Health with Deirdre Mylod and Dave Keller
4 in approximately the spring of 2012.

5 A. Well, there was actually two pitches, one of
6 which I wasn't part of. And I did not make a pitch, per
7 se. I was there in collaboration, I guess the best way
8 to characterize it, coming straight back from Grand
9 Cayman directly, as a matter of fact, to Phoenix.
10 And --

11 Q. And Phoenix because Banner Health was based in
12 Phoenix?

13 A. That is correct. And we presented to their
14 committee, which was comprised of 20 some, 25 people, I
15 don't remember the number. And left after that.

16 Q. Had there been a previous presentation made to
17 Banner Health before?

18 A. Several times, yes.

19 Q. By whom?

20 A. Dave Keeler, and I think Deirdre might have
21 been part of it, too. I don't recall that part.

22 Q. So why did you go to Banner Health straight
23 from the meeting at the Grand Cayman?

24 A. Not because I wanted to, but that was the date
25 of the meeting. It was a final committee meeting. And

1 Q. And why did you decide that you needed to go
2 to Banner Health?

3 A. Because Dave Keeler asked me to. And when
4 people ask me to be a part of it, I acknowledge that and
5 support them.

6 Q. When did Dave Keeler ask you to be a part of
7 that presentation?

8 A. I have no idea.

9 Q. Was it immediately before it, you know, was --

10 A. No, no, it was planned in advance. But it
11 just happened to fall on the following day at the
12 conclusion of our trip to Grand Cayman, so I had to drop
13 my wife -- well, I didn't drop her off, we went two
14 different directions from that meeting or that club
15 trip.

16 Q. And based on your experience at that
17 presentation, what was your impression of how your
18 colleagues presented to Banner Health?

19 A. Very well. And the reception was very well,
20 too. I mean, our read on the audience was very positive
21 feedback.

22 Q. Did you have any concerns about getting the
23 account?

24 A. You always do. I mean, I live in a world of
25 paranoia, you know. You don't bank on it until it's

1 say -- because it's either you win the business or you
2 don't. It's a zero sum game. Zero or 100 percent. So
3 you handicap it on the basis of your expertise, your
4 read of the situation, et cetera, et cetera. And I felt
5 it to be about an 80 percent, 75 to 80 percent
6 likelihood. So it was handicapped.

7 Q. It was uncertain, but as you said, a high
8 probability?

9 A. And that goes on your gut and the people you
10 know there and friends you make and coaching you get,
11 and that type of thing, sure.

12 Q. Right. And then at some point at the end of
13 April, beginning of May, you heard from Banner that they
14 had selected NRC, is that right?

15 MR. WILLIAM KASPERS: Object to form.

16 THE WITNESS: I did not hear from
17 Banner.

18 BY MS. GOZDECKI:

19 Q. What did you hear?

20 A. I heard from my national accounts person
21 initially. Was putting calls in to follow up on it.
22 Wasn't getting any response back, which is never a good
23 sign, of course.

24 Q. So you were putting calls in on it or Dave
25 Keeler?

1 A. It was Dave Keeler's account and he reports to
2 me or reported to me. So he was placing phone calls in
3 to figure out what was going on and, you know, when were
4 they making the decision. Because the decision point
5 was sliding. It was supposed to be a certain date and
6 typically in these organizations they don't hold to
7 their dates. So he put in several calls and wasn't
8 getting any feedback or any call backs.

9 So he called me and says, you know, I'm not
10 getting any call backs. I'm a little worried about
11 this. So I did the right thing, I let Al know this is
12 what the status is because everybody knew that this was
13 a deal that we were waiting on receiving or getting
14 acknowledgement for.

15 So I just said I want to let you know, we're a
16 little concerned here because we're not getting any
17 feedback.

18 I don't remember what the time span was
19 between that and the follow-up call, but the follow-up
20 call that Dave did make did connect, whether he
21 connected or they connected with him I don't recall,
22 saying that the committee had chosen to go another way.
23 And so immediately I called Al and said, okay, you know,
24 here's what we're hearing, we've got to go to plan B
25 here, figure out who we can go to in the organization to

1 overturn, or whatever the case may be, the committee
2 vote.

3 Which is not unusual to have happen. It's
4 happened many, many times in my career and I'm sure in
5 many other people's careers. The committee votes one
6 way, you make a value, cogent business argument to the C
7 suite, we're market leaders. It's like the old adage,
8 nobody fired somebody for hiring IBM. That's who we
9 were. So that kind of conversation. Not quite that
10 way, but along those lines.

11 So we were putting together a plan B or
12 whatever our plan was to go after the CMO and people
13 above the committee, because these were all users,
14 technical buyers, if you will. And that's what we were
15 in the process of doing.

16 Q. When you said, I want to get this right, I
17 think you said you heard from Dave --

18 A. Correct.

19 Q. -- that the committee vote had gone another
20 way?

21 A. That is correct.

22 Q. What specifically happened in that
23 conversation?

24 A. That's a year and a half ago, so -- he called
25 and said, you know, that the committee is going a

1 different direction, which was NRC, that they had chosen
2 NRC and that was the extent of it. I said, okay, now we
3 got to figure out what is our next step.

4 Because you don't give up, you don't die, you
5 don't roll over, that's not our nature. So you figure
6 out, okay, what do we do now. Let's talk about who we
7 go after, who we need to talk to to overturn that or to
8 change the game.

9 Q. And you said that you immediately called Al --

10 A. Yes.

11 Q. -- to talk to him about that?

12 A. Yes.

13 Q. And what was the plan that you came up with?

14 A. Well, we hadn't come up with a plan yet,
15 frankly speaking. But the plan was to get ahold of the
16 CMO. Pat had made some comments about knowing people
17 there several weeks ago or several weeks prior to that,
18 rather, that he was going to reach out and make a
19 connection with the CEO or somebody. I don't remember
20 who he knew there.

21 And I think Al had reached out to Pat when I
22 made the first call to him saying we're not getting any
23 feedback there, and I think Al told me he was going to
24 call Pat to see if he had connected with anybody at
25 Banner yet or if he would. And apparently Pat was

1 supposed to do that. That's all I know.

2 Q. So as soon as you heard from Dave --

3 A. Right.

4 Q. -- this is where you said we've got to go to
5 plan B?

6 A. Yeah, we got to figure out, what is your next
7 step.

8 Q. Okay. And is it true that you didn't want too
9 many people to know about it?

10 A. Well, what I didn't want to have happen is you
11 send off a red flare without us having the opportunity
12 to try to go in there and fix it, because we've done
13 that many times before. So you don't go -- it's the
14 crying fire in a movie theatre. You know, it was too
15 early to call fire, because we've turned these things
16 over many, many times.

17 Q. Don't you think it was important to let Pat
18 Ryan know about it?

19 A. Well, I went to my boss and Pat doesn't accept
20 calls from people other than Al.

21 Q. Had you ever tried to call Pat Ryan before?

22 A. No, I was advised not to do that because he
23 chewed somebody else out for doing it.

24 Q. And you were advised by Al Vega not to call
25 Pat directly?

1 A. I believe it was Al, yeah.

2 Q. So you went to Al directly, not to Pat Ryan?

3 A. He's my boss, chain of command.

4 Q. I'm handing you, Mr. Lambert, what is
5 Deposition Exhibit Number 29. It's been previously
6 marked and has been part of the record in connection
7 with other depositions in this case. It may -- it may
8 be that portions of it you've not seen.

9 MR. WILLIAM KASPERS: Do you have
10 another copy?

11 MS. GOZDECKI: Yes, I do.

12 THE WITNESS: Yeah.

13 BY MS. GOZDECKI:

14 Q. Deposition Exhibit 29 references the news
15 about Banner --

16 A. Sure.

17 Q. -- is that right?

18 A. Sure.

19 Q. Okay. And Reggie Dye at the bottom of the
20 first page of Deposition Exhibit 29 sends an e-mail to
21 Lisa Weissner, right?

22 MR. TYLER KASPERS: Objection. How
23 would he know?

24 THE WITNESS: I wouldn't have known
25 that.

1 BY MS. GOZDECKI:

2 Q. I'm asking you about Deposition 29, right?

3 A. Yes.

4 Q. And it indicates that there's an e-mail from
5 Reggie Dye to Ms. Weisser, right?

6 A. Yes.

7 Q. And my question for you is who is Lisa
8 Weisser?

9 A. Lisa worked for -- I don't know if she worked
10 for him or not, for Reggie. She was the proposal lady,
11 writes the proposals. So I don't recall if she reported
12 to Reggie or not. I think she did.

13 Q. Reggie made the statement that he had -- that
14 you had called him, is that right?

15 MR. WILLIAM KASPERS: Object to form.

16 THE WITNESS: I probably did because I
17 had to update what the forecast was just to
18 let him know this is going on, so that made
19 that forecast that much shakier at that
20 point.

21 BY MS. GOZDECKI:

22 Q. So did you -- I'm sorry. So you remember
23 calling Reggie about what happened with Banner?

24 A. I don't remember the conversation, but
25 obviously I did, so --

1 Q. And the purpose of it would have been?

2 A. Just to advise him what was going on, sure.

3 Because we were very -- all of us were in close contact
4 with Reggie about where we were in the month or in the
5 quarter, whatever the case may be. And if something was
6 getting hedged or hedgy, then it was my responsibility
7 to let him know that.

8 Q. So you talked to Dave Keeler by telephone?

9 A. Yes.

10 Q. And then you talked with --

11 A. Al.

12 Q. And then you talked with Reggie?

13 A. I would imagine that was the chronology of it.

14 Q. Was there anybody else that you contacted?

15 A. I think I mentioned it to Deirdre just out of
16 respect for her, that this is what we're hearing from
17 Banner.

18 Q. Do you remember texting Deirdre?

19 A. I don't remember whether I texted her or
20 called her. I don't remember which it was.

21 Q. Well, hadn't you been with Deirdre at McLaren,
22 in a presentation for McLaren?

23 A. Yes, uh-huh.

24 Q. Perhaps the same day or very close to that
25 time?

1 A. I don't remember the time frame on that at
2 all. I don't remember.

3 Q. Okay. And you're saying today that you don't
4 remember whether or not you texted Deirdre? I just want
5 to make sure.

6 A. I don't know. I don't know whether it was a
7 phone call or a text or e-mail. I don't know which it
8 was.

9 Q. Okay. And what kind of -- let me ask you
10 about this. This is Deposition Exhibit Number 28, Mr.
11 Lambert.

12 Gentlemen, do you need another copy?

13 MR. TYLER KASPERS: Yes.

14 THE WITNESS: That's the e-mail, that
15 was the answer to your question.

16 BY MS. GOZDECKI:

17 Q. Right. So my question to you about Deposition
18 Number 28 is, do you remember sending the e-mail?

19 A. I do now that I'm reading it, yes.

20 Q. So it appears that you had already shared some
21 of this information because you don't explain in the
22 e-mail what happened?

23 A. The three that I just mentioned, yes.

24 Q. And your e-mail to them was, please keep
25 completely mum about above to anyone internally as we

1 are developing a plan and cannot afford to let the word
2 get out?

3 A. Sure.

4 Q. And what do you mean when you say you can't
5 afford to let the word get out?

6 A. It's before we have -- you have to understand
7 in our business you get committees that make decisions
8 all the time. Oftentimes they are overridden by the
9 CXOs. They let them go through their little process and
10 at the end of the day the decision is made at the
11 executive level, anyway.

12 So running to whomever and saying, you know,
13 the sky is falling when we haven't even taken the
14 opportunity of going in there and fixing it, changing
15 the decision to our way, is ludicrous. It's like, you
16 know, the wolf running around or sheep calling, whatever
17 that -- you know what I'm trying to say.

18 Q. Sure. But I can understand you not wanting it
19 to get out externally. But why didn't internally, why
20 does that matter?

21 A. For the same reason I just pointed out.
22 Internally who needs to know this at this particular
23 point, because we're going to create that plan
24 ourselves.

25 You know, you're looking at it from the

#28

From: Andrew Lambert <ALambert@pressganey.com>
Sent: Wednesday, May 2, 2012 6:51 PM
To: Reggie Dye <RDye@pressganey.com>; Deirdre Mylod <DMylod@pressganey.com>;
David Keeler <DKeeler@pressganey.com>
Subject: Banner

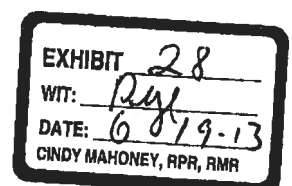
All:

Please keep completely mum about above to anyone internally as we are developing a plan and cannot afford to let the word get out..

Thx

Andy

Sent from my iPhone



PG2.000049

#29

From: Dan Farrell <DFarrell@pressganey.com>
Sent: Thursday, May 3, 2012 5:19 PM
To: Patrick Ryan <PRyan@pressganey.com>; Patricia Cmielewski <PCmielewski@pressganey.com>
Subject: FW: Banner News

Pat, Patti,

Looks like there is news on Banner that was being held back.

Dan

From: Lisa Welsser <LWeisser@pressganey.com>
Date: Thu, 3 May 2012 16:10:11 -0400
To: Dan Farrell <dfarrell@pressganey.com>
Subject: FW: Banner News

FYI,

From: Reggie Dye
Sent: Wednesday, May 02, 2012 6:52 PM
To: Lisa Welsser
Subject: RE: Banner News

Hey Lisa,

Just got this from Andy as well. Looks like they're trying to salvage so definitely keep to yourself for now. Thanks!

All:

Please keep completely mum about above to anyone internally as we are developing a plan and cannot afford to let the word get out..

Thx

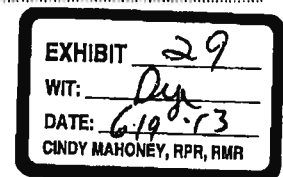
Andy

Reggie

The only sustainable competitive advantage is continuous innovation, which requires inspired players.

From: Reggie Dye
Sent: Wednesday, May 02, 2012 3:38 PM
To: Lisa Welsser
Subject: Banner News

Lisa,



Just got a call from Andy...Banner went with NRC. Reason we were given is that they had more flexible reporting. A typical reason from a committee of technical buyers vs. a strategic decision made by an executive team. What's funny is

that they allegedly had gone with Avatar because their reporting was cooler!

Al and I know, but we're not ready for public disclosure so please keep this to yourself for now until Andy is ready to make it known.

Reggie

The only sustainable competitive advantage is continuous innovation, which requires inspired players.

Reggie Dye
Vice President, Sales Operations
Press Ganey Associates, Inc.
Outcomes driven. Performance strong.
480.588.8425 (Office)
480.245.9770 (Cell)
rdye@pressganey.com
pressganey.com